



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,598	01/20/2004	Peter M. Bonutti	781-A04-006-3	1100

33771 7590 07/28/2005

PAUL D. BIANCO: FLEIT, KAIN, GIBBONS,
GUTMAN, BONGINI, & BIANCO P.L.
601 BRICKELL KEY DRIVE, SUITE 404
MIAMI, FL 33131

EXAMINER

BROWN, MICHAEL A

ART UNIT	PAPER NUMBER
----------	--------------

3764

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/760,598

Applicant(s)

BONUTTI ET AL.

Examiner

Michael Brown

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 6-9, 12-18, 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bastyr in view of Taylor.

Bastyr discloses in figures 1-4B shoulder orthosis comprising a lower arm section 64, a drive member (54, 56), a lower cuff 36, hand cuff 42, the drive mechanism is rotated manually and rotates the lower arm section from different positions, an upper arm section (the flat rectangular shaped portion connected into 54, in fig. 3), that is adjustable, a base section 48, a second drive means 72. However, for the sake of argument, Taylor teaches in figures 1-4 s shoulder orthosis comprising a first drive mechanism 20 and a second drive mechanism 30. It would have ordinary skill in the art at the time that the invention was made that the first and second drive mechanism as taught by Taylor could be substituted for the drive mechanisms disclosed by Bastyr because the four drive mechanism are interchangeable.

Claims 4-5, 10-11 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Schween.

Schween teaches in figure 3 a shoulder orthosis comprising an arm section having an outer 141 and an inner 161 channel members. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the inner and outer channel members as taught by Schween could be incorporated into the lower arm section disclosed by Bastry in order to be able to adjust the length of the lower arm section.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Longfellow and Bonutti '562, each discloses a shoulder orthosis.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

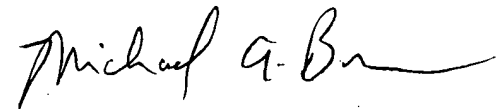
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gergory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/760,598
Art Unit: 3764

Page 4

M. Brown
July 14, 2005

A handwritten signature in black ink, reading "Michael A. Brown". The signature is written in a cursive style with a long horizontal flourish at the end.

**MICHAEL A. BROWN
PRIMARY EXAMINER**